

DEC 11 2003

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BEFORE THE FEDERAL ELECTION COMMISSION

2003 DEC 11 A 11: 38

SENSITIVE

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4 In the Matter of)
5)
6 Centex Construction Group, Inc.)
7 Centex-Rooney Construction Co., Inc.)
8 Bob L. Moss)
9 Gary Esporin)
10 Chris Genry)
11 Mark Layman)
12 Ken Bailey)
13 Bruce Moldow)
14 Gary Glenewinkel)
15 D.J. McGlothern)
16 Albert Petrangeli)
17 Ted Adams)
18 Mike Wood)
19 Raymond C. Southern)
20 Larry D. Casey)
21 David Hamlin)
22 Kathryn Young)
23 Robin McGlothern)
24 Sandra Moss)
25)
26)
27)

GENERAL COUNSEL'S REPORT #2

I. ACTIONS RECOMMENDED

28 Accept the attached Conciliation Agreement with Centex-Rooney Construction Co., Inc.
29 ("Rooney"), Centex Construction Group, Inc. ("CCG"), Bob Moss, Gary Esporin, Brice Hill,
30 Ken Bailey, Chris Genry, Mark Layman, Bruce Moldow, Gary Glenewinkel, D.J. McGlothern,
31 Albert Petrangeli, Ted Adams, J. Michael Wood, Raymond Southern, Larry Casey, and David
32 Hamlin; take no further action as to Sandra Moss and Kathryn Young and send letters of
33 admonishment; take no further action as to Robin McGlothern; and close the file as to all
34 respondents.
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1 **II. BACKGROUND**

2 On September 15, 2003, following the receipt of a combined complaint and sua sponte
3 submission by Centex Corporation, the Commission found reason to believe that Rooney, CCG,
4 Brice Hill, Ken Bailey, Chris Genry, Mark Layman, Bob Moss, and Gary Esporin violated
5 2 U.S.C. §§ 441b(a) and 441f. The Commission also found reason to believe that Bruce
6 Moldow, Ted Adams, Gary Glenewinkel, Albert Petrangeli, Raymond Southern, Michael Wood,
7 D.J. McGlothern, Sandra Moss, Robin McGlothern, Kathryn Young, Larry Casey, and David
8 Hamlin violated 2 U.S.C. § 441f.

9 These findings stemmed from information that CCG and Rooney had reimbursed \$56,125
10 in political contributions made to seven federal candidates, two political party committees, and
11 one political action committee through additions to the employees' year-end bonuses. *See First*
12 *General Counsel's Report*. There was no indication that any of the recipient candidates or
13 committees were aware of these reimbursements. The Commission made no findings of
14 knowing and willful violations against any of these Respondents. At that time, the Commission
15 also authorized this Office to enter into pre-probable cause conciliation negotiations with each of
16 the Respondents.

17 After finding reason to believe, the Commission received additional information from the
18 Respondents and their counsel through the informal investigation process. The new information
19 included additional affidavits from various Respondents and detailed interview memos produced
20 by Centex Corporation's counsel when it was performing its internal investigation. In addition,
21 this Office interviewed both Bob Moss and Gary Esporin to verify the accuracy of their earlier
22 statements and to clarify specific points.

23 On November 12, 2003 the Florida Election Commission entered into a Consent Order
24 with Rooney and Mr. Moss for various state and local contributions reimbursed by Rooney. The

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1 settlement is based upon the same bonus reimbursement system involved in this Matter. The
2 Florida Election Commission found probable cause that Rooney violated Sections 106.08(1)(a)¹
3 and 106.08(5),² Florida Statutes, and that a former employee of Rooney and CCG violated
4 Section 104.091,³ Florida Statutes; however, none of these violations was found to be
5 intentional. The Florida Election Commission imposed a civil penalty of \$203,600 on Rooney.
6 This Office received all materials related to this Consent Order from the Florida Election
7 Commission.

8 **III. CONCILIATION AGREEMENT**

¹ Except for political parties, no person, political committee, or committee of continuous existence may, in any election, make contributions in excess of \$500 to any candidate for election to or retention in office or to any political committee supporting or opposing one or more candidates. Candidates for the offices of Governor and Lieutenant Governor on the same ticket are considered a single candidate for the purpose of this section. FLA. STAT. ch. 106.08(1)(a) (2003).

² A person may not make any contribution through or in the name of another, directly or indirectly, in any election. FLA. STAT. ch. 106.08(5) (2003).

³ (1) Any person who knowingly aids, abets, or advises the violation of this code shall be punished in like manner as the principal offender. (2) Any person who agrees, conspires, combines, or confederates with another person to commit a violation of this code shall be punished as if he or she had committed the violation. (3) Any person who knows of a felony violation of this code and gives any aid to the offender who has violated this code, with intent that the offender avoid or escape detection, arrest, trial, or punishment, shall be punished as if he or she had committed the violation. This subsection does not prohibit a member of The Florida Bar from giving legal advice to a client. FLA. STAT. ch. 104.091 (2003).

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1 **IV. SPOUSES WHO ACTED AS CONDUITS**

2 The Commission made reason-to-believe findings against three spouses of Rooney
3 employees who also appeared to have acted as conduits.

4 This Office recommends that the Commission take no further action, but admonish
5 Sandra Moss, the wife of Bob Moss, and Kathryn Young, the wife of Gary Glenewinkel. In her
6 statement, Sandra Moss says that she did not know her husband had turned in copies of her
7 political contribution checks. Statement of Sandra Moss ¶ 10, Attachment 2. She was familiar
8 with the standard form of receiving reimbursements for other expenditures, but she was not
9 aware that political contributions were reimbursed or even considered in the bonus system. *Id.* at
10 ¶ 5, 10. Kathryn Young states that she also did not know her husband had forwarded copies of
11 her contribution checks to Rooney. Affidavit of Kathryn Young Glenewinkel ¶ 11, Attachment
12 3. Until she was notified by the Commission of its reason to believe finding, she was unaware
13 that her husband or anyone else had received reimbursement for their political contributions. *Id.*
14 Due to Ms. Moss and Ms. Young's lack of knowledge and limited involvement, this Office
15 recommends that the Commission take no further action against them and send each of them a
16 letter of admonishment.⁴

17 This Office recommends that the Commission take no further action against Robin
18 McGlothern, wife of D.J. McGlothern. In her sworn statement, Robin McGlothern says that she
19 never asked anyone to submit her political contribution for reimbursement and has no knowledge
20 that this was done. Sworn Statement of Robin McGlothern ¶ 5, Attachment 4. She emphatically
21 states that she did not receive a reimbursement for her contribution. *Id.* at ¶ 4. Since Ms.
22 McGlothern's one contribution check was dated in 2002 and there is no evidence that any

⁴ Ms. Moss and Ms. Glenewinkel's contribution totals are included in their husbands' civil penalty amounts since their husbands received reimbursement for the contributions.

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1 reimbursement resulted from it since the discretionary management bonus system ended before it
2 could be taken into account, this Office recommends that the Commission take no further action
3 against Robin McGlothern.⁵

4 **V. RECOMMENDATIONS**

- 5 1. Approve the attached conciliation agreement for Centex-Rooney Construction Co., Inc.,
6 Centex Construction Group, Inc., Bob Moss, Gary Esporin, Brice Hill, Ken Bailey,
7 Chris Genry, Mark Layman, Bruce Moldow, Gary Glenewinkel, D.J. McGlothern, Albert
8 Petrangeli, Ted Adams, J. Michael Wood, Raymond Southern, Larry Casey, and David
9 Hamlin.
- 10
- 11 2. Take no further action against Sandra Moss and Kathryn Young and send letters of
12 admonishment.
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- 14 3. Take no further action against Robin McGlothern.
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- 16 4. Approve the appropriate letters.
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- 18 5. Close the file.
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Lawrence H. Norton
General Counsel

12/11/03
Date

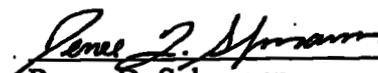
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Attorney

⁵ Ms. Young's contribution amount is not added to her husband's because there is no evidence that a reimbursement occurred.

2003-04-06-2832



Renee D. Salzmann
Law Clerk

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Attachments:

1. Conciliation Agreement
2. Statement of Sandra Moss
3. Affidavit of Kathryn Young Glenewinkel
4. Sworn Statement of Robin McGlothern

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